IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NOS.15408 AND 15409 OF 2000
AND
W.P.M.P.NOS.18437 AND 18438 OF 2006

The Management,
Tamil Nadu Water Supply and
Drainage Board,
Special Division,
Hosur
Dharmapuri District .. Petitioner in both the petitions

Vs.

1.R.Thirumalai Kumar
2.The Presiding Officer,
Labour Court, Salem .. Respondents in W.P.15408 of 2000

1.G.Vijayakumar
2.The Presiding Officer,
Labour Court, Salem .. Respondents in W.P.15409 of 2000

These writ petitions have been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records made in impugned award dated 23.10.1998 made in I.D.Nos.351 and 350 of 1998 on the file of the second respondent and to quash the same.

For Petitioner : Mrs.Sudharshana Sunder

For Respondents: Mr.S.Arunachalam.

WEB COPY

- - - -

COMMON ORDER

These writ petitions challenge the ex parte award passed by the second respondent, namely the Presiding Officer, Labour Court, Salem made in I.D.Nos.351 and 350 of 1998 on 23.10.1998.

https://hcservices.ecourts.gov.in/hcservices/

2.The first respondent in both the petitions filed I.D.Nos.71 and 70 of 1995 before the Labour Court, Vellore.

They were subsequently transferred to the Labour Court, Salem and taken on file in I.D.Nos.351 and 350 of 1998. Due to non appearance of the petitioner herein, the Management, Tamil Nadu Water Supply and Drainage Board, an ex parte award came to be passed. The first respondent in each petition also filed C.P.Nos.154 and 155 of 1997 before the Labour Court, Salem, claiming a sum of Rs.2,43,307/- and Rs.2,42,307/- respectively, as backwages. Under these circumstances, challenging the impugned orders, these writ petitions have been brought forth before this court.

3.The court heard the learned counsel on either side. Admittedly, the award came to be passed in I.D.Nos.351 and 350 of 1998, setting the petitioner herein ex parte. After hearing both sides, the court is of the considered opinion that an opportunity should be given to the petitioner to put forth his case in the said I.Ds. Hence, for that purpose, the impugned orders have got to be set aside and the matter has got to be remitted back again to the Labour Court, Salem. The learned counsel for the first respondent in each petition would insist payment under Section 17(B) of the Industrial Disputes Act. Under these circumstances, after passing the award ex parte, the C.Ps were filed for backwages, to which they are entitled to.

4.The learned counsel for the petitioner would submit that there is no whisper as to the employment in the original affidavit filed in support of the vacate stay petition and that the applications for getting backwages under Section 17(B) of the Act were filed in the year 2006, where he has spoken about unemployment and under these circumstances, the backwages should not be ordered during the pendency of the writ petitions. The learned counsel for the respondents, on the contrary, would submit that the applications were originally filed to vacate the stay in the year 2002 and the applications under Section 47(B) of the Act were filed in the year 2006 and under these circumstances, the case of the first respondent herein in each petition is that they remain unemployed and a duty is cast upon the Management to prove the contrary fact and not otherwise. So long as it is not proved, the first respondent in each petition is entitled to the benefit under Section 17(B) of the Act. In order to get the benefit under Section 17(B) of the Act, three conditions have got to be satisfied. Firstly, pendency of the proceedings. Secondly, employee should not be employed and thirdly, there must be specific averment in the affidavit that he remains unemployed. In the instant case, the court is able to notice that all the three conditions are satisfied. Under these circumstances, there cannot be any legal impediment for giving effect to the benefits under Section 17(B) of the Act.

https://hcservices.ecourts.gov.in/hcservices/

5.It is pertinent to point out that the award came to be passed in the year 1998 and the writ petitions were filed in the year 2000. At that time, interim stay has been granted.

The vacate stay petitions were filed. The question of backwages was never whispered at that time. The applications for payment under Section 17(B) of the Act have been filed in the year 2006. When these writ petitions were taken up for enquiry, the first respondent in both the petitions insist for backwages. The court is of the considered opinion that there cannot be any impediment for allowing last drawn wages, to which the first respondent in each petition is entitled to. Under these circumstances, though these writ petitions are ordered, setting aside the orders of the second respondent made in I.D.Nos.351 and 350 of 1998, dated 23.10.1998, the matters are remitted back to the said Labour Court to conduct an enquiry afresh and pass suitable orders thereon. At the same time, in order to give effect Section 17(B) of the Act, the petitioner in the writ petitions is directed to pay the last drawn wages till the disposal of the I.D. cases before the forum below. Accordingly, these writ petitions are ordered. No costs. In view of the order passed in the main writ petitions, the WPMPs are disposed of.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vvk

To

The Presiding Officer,
Labour Court, Salem

+2ccs to Mrs.Sudharshana Sunder, Advocate Sr 52137,52138
+2ccs to Mr.S.Arunachalam, Advocate Sr 52207, 52209

MDR (CO)
km/28.8.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/